



# El-Attar v. Hollywood Presbyterian Medical Center, 56 Cal. 4th 976 (Cal. 2013)

Topics Covered: Medical Staff, Peer Review

## **Outcome: Unfavorable**

### **Issue**

The issue in this case was whether, under California law, a hospital governing body, rather than a Medical Executive Committee (MEC) could appoint a Judicial Review Committee (JRC) to adjudicate a denial of medical staff privileges.

### **AMA Interest**

The AMA supports fairness in peer review proceedings, medical staff self-governance, and strict compliance with medical staff bylaws.

### **Case Summary**

Osamah A. El-Attar, MD is board certified in internal medicine and cardiology and has been a member of the medical staff at Hollywood Presbyterian Medical Center since 1975. Beginning in about 2000, he began to criticize certain hospital practices regarding patient care. In 2002, he, along with other members of the medical staff, signed a petition to remove the hospital's chief executive officer (CEO). Also that year, the hospital governing board reviewed the quality of care that Dr. El-Attar provided to his patients, and it hired two independent medical review groups to assist in this process. The reviewers found that Dr. El-Attar had engaged in disruptive behavior and his medical care in several respects fell below accepted professional standards.

Shortly before his medical staff privileges were due to expire, Dr. El-Attar submitted a periodic application to the MEC for reappointment. The MEC recommended that he be reappointed, but the hospital governing board ordered that the application be denied and it directed the CEO to suspend his privileges. The CEO then requested the MEC to ratify the board's decision to suspend Dr. El-Attar, but the MEC refused to do so. The CEO notified Dr. El-Attar that his clinical privileges were summarily terminated, but the MEC terminated the suspension. Shortly thereafter, the hospital denied Dr. El-Attar's application for reappointment. Dr. El-Attar requested a judicial peer review of the denial of his privileges.

The MEC met and granted Dr. El-Attar's request for a judicial peer review. However, it also resolved to "leave ... the actions relating to the Judicial Review Hearing procedures to the [hospital] Governing Board." The hospital submitted a list of six charges of misconduct and substandard practice against Dr. El-Attar. It also selected a hearing officer and six members of the medical staff to serve as the JRC.

Following approximately 30 evidentiary hearing sessions, the JRC made specific findings on all six of the charges against Dr. El-Attar. It found three of the charges substantiated by a preponderance of the evidence, concluding –

“Under all circumstances of this case ... the ... decision of the Governing Board to deny Dr. El-Attar’s application for reappointment to the Medical Staff of this Hospital was reasonable and warranted, but the Committee notes that if it had been the initial decision maker, it would have pursued an intermediate resolution.”

Based on this determination, the JRC ratified the denial of Dr. El-Attar’s reappointment to the medical staff.

Dr. El-Attar appealed the JRC decision on several grounds, including the MEC’s delegation to the hospital of the power to select the members of the JRC. The trial court denied his appeal and entered judgment for the hospital. He then appealed to the California Court of Appeal.

The Court of Appeal found that Dr. El-Attar had been deprived of a fair hearing under common law, the medical staff bylaws, and California statutes. The hospital’s medical staff bylaws provided that the MEC was to appoint the JRC and the hearing officer, and there was no provision for the MEC’s delegating this appointment power to the hospital. Thus, the court held that the MEC lacked authority to delegate its appointment power to the hospital. It did not consider the various claims of error other than the procedure used to appoint the JRC. The Court of Appeal reversed the trial court judgment and remanded with new instructions to issue an order against the hospital and grant Dr. El-Attar a new peer review hearing.

The hospital appealed to the California Supreme Court. In its order granting review, the Supreme Court identified the following issues:

“(1) Could the executive committee of the hospital medical staff delegate to the hospital governing board its authority to select the hearing officer and the physician members of the peer review panel to hear a physician’s challenge to the governing board’s denial of his application for reappointment to the hospital medical staff? (2) If the hospital by-laws did not permit this procedure, was the peer review panel selected by the governing board “improperly constituted,” requiring a new peer review procedure conducted by a new hearing panel selected by the executive committee?”

On June 6, 2013, the California Supreme Court reversed the Court of Appeal decision. It held that the medical staff bylaws were violated in connection with the selection of the peer review panel and of the hearing officer. Nevertheless, the violation was not sufficiently material as to deprive Dr. El-Attar of a fair peer review hearing. The case was remanded for consideration of Dr. El-Attar’s other bases for claiming that he had been unjustly deprived of his medical staff privileges.

### **Litigation Center Involvement**

The Litigation Center, along with the California Medical Association filed an *amicus* brief in the California Supreme Court. The brief argued that when the medical staff bylaws expressly vest the MEC with authority to appoint the JRC, only the MEC should be allowed to make such appointment. Further, the brief contended that only a MEC-appointed JRC can ensure the physician receives a fair hearing, free from potential conflicts of interest and bias.

California Supreme Court brief